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Letter dated 18 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/896).

The Counter-Terrorism Committee has received the attached supplementary report from Georgia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 15 October 2002 from the Permanent Representative of Georgia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit herewith the supplementary report submitted by Georgia pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

(*Signed*) Revaz **Adamia**
Ambassador
Permanent Representative

Enclosure

Supplementary report of Georgia, submitted pursuant to paragraph 6 of resolution 1373 (2001)

Paragraph 1

Under art. 190 of the Code of Criminal Procedures of Georgia, the measure of seizure of property or bank account is used to satisfy a civil lawsuit, as well as other property penalties, provided there is data that the property will/has been hidden or is earned by criminal means.

On 7 June 2002 the Parliament of Georgia ratified the international Convention on Suppression of Financing of Terrorism and on 18 July 2002 deposed its instrument of ratification.

According to the legal conclusion of the Ministry of Justice of Georgia the Criminal Code of Georgia punishes/covers all offences provided by the International Convention for the Suppression of Financing of Terrorism.

In order to harmonize national legislation with the obligations of the UN General Assembly Resolution No. 1377, the Ministry of Justice of Georgia prepared a draft law on "Amendments to the Criminal Procedural Code of Georgia".

The draft law adds paragraph 2 to art. 190 (the purpose and ground for the seizure of property), which states that the measure of seizure of resources and/or property provided in the Criminal Procedural Code of Georgia, will apply to the cases of terrorism, its preparation or other grave crimes, to ensure prevention of these crimes, if the reasonable suspicion exists that the recourses and/or property will be used to commit such crime.

The above mentioned draft law was approved by the government of Georgia and is being considered by the Parliament of Georgia.

In order to harmonize national legislation with the obligations of the UN General Assembly Resolution No. 1377, the Ministry of Justice of Georgia prepared a draft law on "Alterations to the Criminal Code of Georgia", that provides sanctions for the commitments of terrorist crimes (art. 323 (terrorist act), 327 (creation, leading or participating in terrorist organizations)). These alterations provide that above mentioned crimes are considered to be the gravest crimes under art. 12 of the Criminal Code of Georgia; thus criminal liability will be imposed even at the stage of preparation of these crimes.

A new article (art. 324) of the Criminal Code of Georgia prescribes a new offence – Cyberterrorism. The notion of Cyberterrorism is a new definition, prescribed by the statute on Antiterrorism of the United States (US Patriot Act). The draft law definition of Cyberterrorism was formulated by analysis of the abovementioned Statute and according to the *corpus delicti* of crime of terrorism provided by the Criminal Code of Georgia. The article stipulates criminal responsibility for acquiring, use or threat of use of computerized information protected by the law as a result of illegal access, provided this action threatens public security, strategic, political or economic interest of a State, is intended to terrorize society and/or have impact on the authorities. The article consists of two paragraphs; The punishment under the first paragraph entails restriction of freedom from 8 to 15 years, by second para. – restriction of freedom from 12 to 20 years, or life imprisonment.

Taking into consideration the novel nature of the crime, in the Criminal Code a qualifying circumstances were added to the article 324 (Technological terrorism), according to which criminal liability was defined for committing the same actions causing substantial damage and other grave consequences.

Abovementioned draft law was approved on the session of Georgian Government and is submitted to Georgian Parliament for consideration.

According to provisions of the Georgian organic law "About National Bank" and Georgian law on "About Activates of Commercial Bank", Georgian National Bank has the authority to demand from banks information concerning their financial-economical activates, as well as information related to their monitoring. The national Bank also has authority, within the limits of its competency, to access to confidential information.

The concrete mechanism of legislative regulation, dealing directly with simulated contracts, is not available in Georgia. Suspicious actions, including simulated contacts that may have signs of criminal behavior (e.g. signs of legalization of illegal income), are dealt in accordance with General Procedural and preliminary investigation. Criminal Liability for legalization of illegal income is defined by article 194 of Georgian Criminal Code.

Legalization of illegal income

Legalization of illicit income i.e. giving a legal form to money or other property, as well as concealing the source, location allotment, circulation of illicit income, the actual owner or possessor of property or property shall be punishable by fine or by imprisonment of up to five years in prison.

Working out effective measures to combat money laundering, such as legalization of illegal income, remains a high priority in Georgia. In this regard, in Aril 2002 intersectional coordinating commission was created by the order # 395 of the President of Georgian. Its main objective is the development of action plan for fighting money laundering and presenting legislative initiatives/draft laws to the President of Georgia.

It has to be mentioned, that Georgia's Ministry of Finance and the National Bank have prepared two alternative draft laws addressing the problem of Money Laundering. Despite the important differences between the drafts, some fundamental provisions are included in both, which address the basic principles for the elaboration of a complete legislative package combating the problem of money laundering. We consider, that the comprehensive legislative package is needed, which will include law of Georgia on fighting illegal money legalization and an Act on the changes in Criminal Code of Georgia, as well as normative acts in connection with their implementation. Taking in consideration the abovementioned, we consider that scope of the package must include provisions requiring the officers of banks (or alike institutions), to notify immediately the competent law enforcement agency on money transfer done after certain time.

During the work on the draft law, it has to be taken in consideration that cash-based financial operations are still widely used in Georgia. From this point of view, the legal mechanism which will counter money laundering, has to consist of all necessary provisions, designed to assist law enforcement agencies to act immediately on suspicious financial operations and to take all requisite measures prescribed by the law. The establishment of a special service made up of prosecutors, investigators, financial experts, economists and the qualified taxation officers, which will act immediately to all related notices and, in case of need, will take the measures prescribed by law, is recommended.

It is also necessary to establish a network/link between the state and non state offices and institutions, whose activities, by their nature, entail theoretical risk of money laundering. Besides, united information network has to be established to ensure the immediate response by the competent institutions to the suspicious activities.

There is as also a need to review the Legislation on charitable and humanitarian organizations, as activities that carry high risk of money laundering.

The Georgian legislations has to be enhanced to enable appropriate law enforcement agencies to seize or freeze the financial assets, in cases where the legitimate suspicion exists that the resources will be used to commit or plan terrorist

crimes. In such cases, the identity of the bank account owner, shall be provided to the law enforcement agencies in accordance to the laws governing the privacy concerns.

Taking into consideration an international character of money laundering, international efforts have to be based not only on cooperation between the law enforcement bodies, but also between all institutions, which encounter this problem.

On 30 April 2002 Georgia signed the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The Convention was submitted to the Parliament for ratification.

According to the legal conclusion of the Ministry of Justice of Georgia, the criminal legislation of Georgia requires amendments to ensure its compatibility with the Convention. The special commission has been set up by the Presidential decree to expeditiously prepare due amendments.

Sub-paragraph 2 (a)

The Law "On export control of armaments, military technology and dual-use materials production" regulates all issues related to the armaments export control. The sub-point of the 1st point of the article 19 of the Law of Georgia "On the licensing of interregnal activity and authorization" (which comes into force on 1 January, 2003), stipulates that the Ministry of Justice gives authorizations for the production of armaments, technical documentation concerning arms transit, re-export, import and expert of labor, services and material. The Ministry of Economy Industry and Trade is charged with authorizations concerning export, export and transit of dual-use materials.

In accordance with the Law of Georgia "On the bases of licenses of interregnal activity and authorizations", a new draft law has been prepared "On export control of armament, military technology and dual-use production".

Sub-paragraphs 2 (b) and (g)

According to the agreement between the Ministry of State Security Service, Ministry of Internal Affairs and Department of State Border Guard, the information about drug trafficking and suspicious movements on the borders is regularly exchanged. They carry out joint measures in order to assess the received information.

As a result of the joint actions of the Department of State Border Guard and the Ministry of Internal Affairs the following narcotics have been withdrawn: heroin, opium and marijuana.

Sub-paragraph 2 (c)

Georgia is a party to the Convention relating to the Status of Refugees (1951). According to Article 1, paragraph F of the Convention:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (c) He/she has been guilty of acts contrary to the purpose and principles of the UN.

According to the paragraph 2 of Article 6 of the Constitution of Georgia: the legislation of Georgia corresponds with universally recognized norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they do not contradict the Constitution of Georgia, take precedence over domestic normative acts.

In accordance with the article 1 of Chapter 26 of the "The Law on Georgian Citizenship", the Georgian citizenship will not be granted to the persons who have committed international crime against peace and humankind.

The granting of asylum to the foreigners is regulated by the law "On legal status of foreigners", where Chapter 6 states that Georgia gives asylum to those foreigners, who are persecuted for protection of human rights and peace, for progressive social-political activity, scientific and other creative activity. Asylum can not be given to foreigners, whose ideas and activity are in contradiction to UN goals and principles and state interests of Georgia. In accordance to sub-point "a" of the article 3 in the Chapter 23, an entry into Georgia of the citizen of foreign state, can be denied in case he/she has committed crimes against peace and humankind.

Sub-paragraph 2 (d)

According to article 326 of the Criminal Code of Georgia, any activity, participation or support of international terrorist organization or activity is punishable by law.

Sub-paragraph 2 (e)

There is no special legislative act in Georgia which concerns fight against terrorism. The provisions concerning the issue are covered in the laws "On State Security Service", "On operational-investigation activity" and the regulations published by the state institutions. It should also be mentioned that the Ministry of State Security has prepared a draft law on "fight against terrorism", which is being further elaborated.

The types of terrorist crimes and responsibility for their commitment are determined by the Criminal Code of Georgia. For instance:

Article 323, defines *terrorist act* as "explosion, firing, use of weapon or other activity, which endangers human life, causes damage to property and/or other results, threatens social security, State's strategic, political and economic interest, committed with the aim to frighten population or exert pressure upon government". Punishment for such crime is 5 to 20 year imprisonment term.

Article 324 - *technological terrorism* – use of nuclear, radiological, chemical or biological weapons or its components, pathogenic micro bodies, radioactive materials detrimental for human health or threat of their using, as well as seizure of nuclear, chemical or strong technological or ecologically dangerous buildings, which threaten social security, State's strategic, political or economic interest, committed with the aim to frighten population and exert pressure on government. Punishable by up to 8 to 20 years of jail.

Threat upon the life, health or property of the President or any other political official of Georgia or a their family members, related to the diplomatic activity of such official, shall be punishable by prison sentence ranging from 7 to 20 years in length or by life imprisonment.

Article 326 - *Assault on person or institution enjoying international protection.* Assault on the representative of a foreign state or the employer of an international organization enjoying international protection or on their office or residential building or vehicle, as well as threatening their life, health or property, including their family members, on political motives or for deterioration of international relations, are punishable by up to 7 to 20 years or life imprisonment.

Article 327. *Formation of, leading or participation in terrorist organization.*

1. Formation or leading of a terrorist organization, shall bear legal consequences of imprisonment from 7 to 15 year jail.

2. Participation in terrorist organization shall be punishable by prison sentences from 5 to 10 years.

Article 328. *Accession to and/or assistance to terrorist organization of foreign state or to such organization controlled by foreign state.* Accession to the terrorist organization of a foreign sate or to such organization controlled by a foreign state or assisting it in terrorist activities shall carry legal consequences of imprisonment from 7 to 15 years.

Article 329. *Seizure of hostage for terrorist purposes.* Hostage taking to coerce state authority or an international or religious organization to carry out or not to carry out a particular action is punishable by law. The article consists of three paragraphs: aggravating circumstances are: actions committed against the political official, person or a member of his/her family, official representative of a foreign state or the person enjoying international legal protection, by a group, repeatedly, by a terrorist organization, if the action claimed a human life or has given rise to a grave consequence. The sentence for the crime is defined according to the aggravating circumstances: prison sentence ranging from 7 to 13 years in length for the paragraph 1, prison sentence ranging from 8 to 15 years in length for the paragraph 2 and prison sentence ranging from 12 to 20 years in length for the paragraph 3.

Art. 330 – *Taking possession of or blocking object of strategic or special importance for terrorist purposes.* The article consists of two paragraphs, aggravating circumstance is if the action claimed a human life or has given rise to a grave consequence. The sentence for the first paragraph is prison sentence ranging from 8 to 15 years in length, and for the second - prison sentence ranging from 12 to 20 years in length or life imprisonment.

Art. 331 – *False notification on terrorism.* This action is punishable by fine or by corrective labor from one to two years in length or by jail time up to three months or by imprisonment not in excess of three years.

The competence of Courts over the crimes committed

Arts. 4 and 6 of the Georgian Criminal Code provide the scope of applicability of the Criminal law towards the persons, namely:

According to the art. 4, the one who has perpetrated a crime on the territory of Georgia shall bear criminal liability as hereunder provided. the code foresees the exceptions for diplomatic representative of a foreign country as well as the person enjoying diplomatic immunity, as their criminal liability is settled in manner and to the extent permitted by the international law;

Under the 1st and 2nd paragraphs of the Art. 5, the citizen of Georgia as well as the stateless person permanently residing in Georgia having committed the action under the Code which is regarded as crime under the legislation of the state in which it was committed, shall bear criminal liability under this Code if they have not been convicted in another state. The citizen of Georgia as well as the stateless person permanently residing in Georgia has committed the action under this Code which is not regarded as crime under the legislation of the state in which it was committed, shall bear criminal liability under this Code if it is a grave or especially grave offence directed against the interests of Georgia or if the criminal liability for this offence is provided by the International Treaty of Georgia.

Under the art. 5(3), the citizen of a foreign state as well as the person not permanently residing in Georgia without citizenship who commit the act covered under this Code shall bear criminal liability under this Code if it is a grave or especially grave offence directed against the interests of Georgia or if the criminal liability for this offence is provided by the international treaties signed by Georgia if they have not been convicted in another state.

According to the art. 6, the citizen of Georgia as well as the stateless person permanently residing in Georgia shall in no way be extradited to the other state for criminal prosecution or for serving a sentence unless otherwise determined by the international treaties signed by Georgia. The citizen of a foreign state as well as the stateless person on the territory of Georgia, who has committed a crime may be extradited to another state for criminal prosecution or for serving a sentence in a manner and to the extent determined by the International Treaty of Georgia. It shall be inadmissible to extradite a person under asylum who has committed a crime and who is being persecuted for political creed or the person who has committed the action not regarded as crime under the legislation of Georgia or for this crime capital punishment is prescribed in the state seeking extradition. The question of criminal liability of such persons shall be settled in manner and to the extent determined by the International Treaty of Georgia.

Under art. 6 of the constitution of Georgia, the Constitution is the supreme law of Georgia. All other legal acts should be in conformity with the Constitution or the Constitutional Agreement. According to the art. 6(2), International Treaty of Georgia prevails to the national normative acts, provided it does not contradict with the Constitution or the Constitutional Agreement of Georgia.

The timeframes of the assistance in criminal matters are determined under the International Treaties and Agreements of Georgia. As a rule, Georgia acts on the request on extradition in possibly limited time.

Sub-paragraph 2 (f)

According to the Article 27 of the Vienna Convention on the Law of Treaties: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

According to Article 6 of the Constitution of Georgia:

1. The Constitution is the supreme law of the state. All other legal acts shall be issued in accordance with the Constitution.

2. The legislation of Georgia corresponds with universally recognized norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they do not contradict the Constitution of Georgia, take precedence over domestic normative acts.

According to Article 6, paragraph 1 of the Law of Georgia on International Treaties of Georgia: international treaty, to which Georgia is a party, is integral part of the Georgian legislation.

The international treaties, to which Georgia is a party, do not contradict the Constitution of Georgia. According to the Law of Georgia on International Treaties of Georgia before treaty enters into force with regard to Georgia, compatibility of domestic legislation with international treaty and its possible legal affects must be exercised and studied by the Ministry of Justice and in case of incompatibility amendments are to be prepared by the competent Ministry.

In this way relevant international conventions for the suppression of terrorism, to which Georgia is a party, are in harmony with the Georgian Constitution. It means that it is impossible to invoke the Constitution of Georgia to override the legal provisions, those being in harmony with the constitution. It is within a spirit of the Georgian Constitution to fulfil obligations undertaken in accordance with the constitution before international community and international organizations.

On 30 April 2002 Georgia signed the Agreement among the Republic of Turkey, Georgia and the Republic of Azerbaijan on combating Terrorism, organized Crime, illicit Trafficking in Narcotic Drugs and Psychotropic

Substances, money Laundering, Trafficking in Human Beings and Arms smuggling and other major crimes. The Agreement requires ratification for entering into force. The agreement envisages assistance on criminal matters among parties on a whole range of terrorism crimes.

Georgia is fully conscious that combating terrorism by the national authorities only on the territory of Georgia could not be efficient enough, due to the trans-frontier character of the crime of terrorism. Therefore Georgia strives to be part of a world coalition against this one of the most dangerous crime of the 21st century.

Sub-paragraph 3 (a)

Subdivisions of Special Service of Georgian State Protection/Guard work on discovering and neutralizing active terrorist groups, as well as reveal their alliance with international terrorist structures and relation with weapons of mass destruction.

With regard of abovementioned issue, the Special Service of Georgian State Protection/Guard cooperates with other authorities and periodically exchanges operative information. For this reason there is a special position for communications officer by which the information is exchanged unalterably. By means of friendly countries, interagency computer network has been established which allows Interpol and Ministry of Internal Affairs to exchange information.

Sub-paragraph 3 (c)

The reasons for refusal of the request on extradition are determined by the agreements with different states. As for the political ground of refusal, it should be stated that under the legislation of Georgia, it is inadmissible to extradite a person persecuted for political beliefs, but not for a grave crime, especially for terrorist act. Accordingly, political motivation can not be considered to be the ground of refusal of the request on extradition.

Decision on establishment of Anti-Terrorist Centre of member states of the Commonwealth of Independent States was made on 1 December, 2000. The Centre is a body with coordinating functions on combating terrorism. The document will enter into force only after the completion of internal domestic procedures. The document has been submitted to the Parliament of Georgia for ratification. The Parliament is currently work on it.

On 20 July 2002 Georgia signed the Agreement on Cooperation among the Governments of GUUAM (Georgia, Ukraine, Uzbekistan, Azerbaijan and Moldova) participating states in the field of Combat against Terrorism, Organized Crime and other Dangerous Types of Crimes. The internal domestic procedures for the ratification of the Agreement are underway.

Georgia ratified European Convention on Suppression of Terrorism.

Georgia is party to the Agreement among the Governments of the BSEC (Black Sea Economic Cooperation) Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms and its additional Protocol.

Subparagraph 3 (d)

Georgia is carrying out internal legislative procedures with regard to the International Convention for the Suppression of Terrorist Bombings (1998);

Georgia is carrying out internal legislative procedures with regard to the treaty on cooperation of member states of the Commonwealth of Independent States on combating terrorism;

Georgia is carrying out internal legislative procedures with regard to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (1973);

Georgia is carrying out internal legislative procedures with regard to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988);

Georgia is carrying out internal legislative procedures with regard to the International Convention against the Taking of Hostages (1979);

Georgia is carrying out internal legislative procedures with regard to the Convention on the physical protection of nuclear material (1980).

The Parliament of Georgia has no yet ratified number of International Treaties and Conventions on combating terrorism. However, we are able to inform you about the normative acts enabling the implementation of these international instruments.

Resulting from the fact that the Parliament of Georgia has no yet ratified the abovementioned International Treaties and Conventions, the crimes included therein are not considered to be subject to extradition, provided by the bilateral and multilateral international agreements of Georgia.

Sub-paragraph 3 (e)

The bilateral treaties to which Georgia is party do not exclude extradition of persons on crimes relating to terrorism.

Sub-paragraph 3 (g)

Georgia has ratified European Convention on Extradition according to which:

(Article 3 – Political Offences) The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed a political offence for the purposes of this Convention.

Georgia has ratified Additional Protocol to the European Convention on Extradition according to which:

(Article 1) For the application of Article 3 of the Convention, political offences shall not be considered to include the following:

a. The crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;

Paragraph 4

Georgia closely cooperates on international level with bodies specialized in chemical and nuclear issues. Georgia regularly informs the International Atomic Energy Organization on issues raised in paragraph 4 of the Resolution.